

**United States Postal Service and Youngstown Postal Workers Union Local 443, Affiliated with the American Postal Workers Union, AFL-CIO.**  
Case 8-CA-16365(P)

27 August 1984

**DECISION AND ORDER**

BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER

On a charge filed by the Union, Youngstown Postal Workers Union Local 443, affiliated with the American Postal Workers Union, AFL-CIO, on 27 December 1982, the General Counsel for the National Labor Relations Board issued a complaint on 10 February 1983 against the United States Postal Service, the Respondent, alleging that it had violated Section 8(a)(1) and (5) of the National Labor Relations Act.

The complaint alleges that about 7 December 1982 the Respondent altered the location, size, and physical arrangement of the union stewards' work area; that also about that date the Respondent refused to permit union stewards access to typing facilities; that about late December 1982, the Respondent denied stewards forms necessary to leave their workplace to perform union duties; and that about 7 January 1983, the Respondent through its agent and supervisor instituted a rule that only one steward would be permitted in the stewards' work area at any time. The complaint alleges that the Respondent has engaged in this conduct without affording the Union an opportunity to negotiate and bargain with it as the exclusive representative of the Respondent's employees.

The complaint also alleges that the location and physical layout of the stewards' work area creates the impression that the Respondent is engaging in surveillance of its employees' union activities. On 7 April 1983 the General Counsel filed an amendment to the complaint. On 22 February 1983 the Respondent filed an answer to the complaint admitting in part and denying in part the allegations in the complaint and asserting certain affirmative defenses.

Subsequently, on 20 June 1983, the Respondent filed directly with the Board a Motion for Summary Judgment and a supporting memorandum. On 27 June 1983 the Board issued an order transferring this proceeding to the Board and a Notice to Show Cause why the Respondent's Motion for Summary Judgment should not be granted. On 13 July 1983 counsel for the General Counsel filed a Motion in Opposition to the Respondent's Motion for Summary Judgment.

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The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record the Board makes the following

**Ruling on Motion for Summary Judgment**

In its Motion for Summary Judgment and its supporting memorandum, the Respondent contends, inter alia, that the unfair labor practice allegations should be deferred to the parties' grievance-arbitration procedure pursuant to *Collyer Insulated Wire*, 192 NLRB 837 (1971), and *Roy Robinson Chevrolet*, 228 NLRB 828 (1977). Citing *Joseph T. Ryerson & Sons*, 199 NLRB 461 (1972), in its opposition to the Respondent's Motion for Summary Judgment, counsel for the General Counsel contends that because the allegations of the complaint involve grievance filing activity they are not subject to deferral. We agree with the Respondent that the unfair labor practice allegations should be deferred to the parties' grievance-arbitration procedure.<sup>1</sup>

The Respondent's motion avers that on 20 December 1982 the Union filed a grievance over the size, location, and physical arrangement of the stewards' work area. The grievance stated, in part, that:

Management has violated the past practice of allowing Stewards to work in an area that had been mutually agreed upon. Management is

<sup>1</sup> Because we find the Respondent's deferral contention sufficient to warrant granting the Motion for Summary Judgment, we deem it unnecessary to pass on the other contentions raised in the Motion for Summary Judgment.

According to documents submitted by the Respondent and not disputed by the General Counsel, the parties' collective-bargaining agreement contains a grievance-arbitration procedure which culminates in "final and binding" arbitration and which defines a grievance as "a dispute, difference, disagreement or complaint between the parties related to wages, hours and conditions of employment [including, but not limited to] the complaint of an employee or of the Union which involves the interpretation, application of or compliance with the provisions of [the contract]." Art. 17, sec. 3 provides:

**Rights of Stewards**

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified ... may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

also attempting to intimidate its employees in general and the Stewards in particular by giving them a Direct Order to Stand in a conspicuous area located in the center of the workroom floor while processing grievances.

The motion further avers that the grievance was denied at step 2 in January 1983 and subsequently abandoned by the Union when the complaint in this case issued.

In *United Technologies Corp.*, 268 NLRB 557 (1984), we found a dispute arising in the context of processing a grievance to be "eminently well suited for deferral" (id. at 560). That case involved an alleged statement by a supervisor threatening retaliation against an employee if she continued to pursue a grievance. In addressing the contention that the charge concerned grievance-processing and is therefore unsuited to deferral, we observed that "the alleged misconduct 'does not appear to be of such character as to render the use of [the grievance-arbitration] machinery unpromising or futile.'" (Id. at 460 fn. 21 quoting *United Aircraft Corp.*, 204 NLRB 879 (1973), enf. sub nom. *Lodges 700, 743, 1746 Machinists v. NLRB*, 525 F.2d 237 (2d Cir. 1975).) Accordingly, we held that the dispute should be deferred to the grievance-arbitration provisions of the parties' contract. Likewise, in this case, there is no contention that the Respondent has interfered with the grievance-arbitration machinery in a way that has rendered access to it "unpromising or futile." To the contrary, the Respondent has indicated its willingness to resolve the dispute through an arbitral forum and has agreed to waive the timeliness provision of the contractual grievance-arbitration clauses. Thus, we find, as in *United Technologies*, that *Ryerson* is not controlling and that the General Counsel has not alleged facts tending to show that there is a genuine obstacle to utilization of the parties' contractually agreed-upon method for dispute resolution.

The General Counsel has argued, alternatively, that the complaint allegation that the Respondent created an unlawful impression of surveillance of union activity is an "independent" violation incapable of resolution with reference to the contractual provisions. Furthermore, the General Counsel contends, because all other complaint allegations are "inextricably intertwined" with this one, the entire case should be decided by the Board rather than an arbitrator. We disagree with the General Counsel's premise that the charge of unlawful impression of surveillance, as alleged in the complaint, is unsuceptible of resolution under the collective-bargaining provisions.

Initially, we note that the allegation at issue is narrowly drafted: The Respondent is not alleged to

have created an unlawful impression of surveillance in any manner other than interference with the physical arrangement of the stewards' work area alleged elsewhere in the complaint. Thus, the issues to be resolved are: (1) did the Respondent effect a physical alteration of the stewards' work area; and (2) if so, did that alteration place employees and shop stewards in an environment so conspicuous to supervisors and management officials as to inhibit the grievance process. Applying the relevant contractual provisions, an arbitrator would logically consider and resolve these issues in determining whether the Respondent "unreasonably denied" steward requests to process employee grievances. In this regard, we note that the grievance, which the Respondent avers was filed and later abandoned by the Union, protests management "attempt[s] to intimidate its employees" by redirecting their grievance activity to a "conspicuous area located in the center of the workroom." Thus, it appears that the language of the grievance contemplates the very dispute described in the complaint.<sup>2</sup>

We hold that the parties' collective-bargaining agreement commits them to settle this dispute, as well as the other misconduct alleged in the complaint, through the grievance and arbitration procedures during the term of their collective-bargaining agreement. Accordingly, consistent with *United Technologies*, we shall order that the Respondent's Motion for Summary Judgment be granted, that the complaint allegations be deferred to the parties' grievance-arbitration procedure, and that the complaint be dismissed. As in *United Technologies*, however, we shall retain jurisdiction for the purpose of entertaining a motion for further consideration upon a showing that either (1) the dispute has not been resolved in the grievance procedure or submitted to arbitration, or (2) the grievance or arbitration procedures have not been fair or regular or have reached a result which is repugnant to the Act.<sup>3</sup>

<sup>2</sup> Whether in fact the grievance is cognizable under the contract is an issue properly determinable by the arbitrator. See *Urban N. Patman, Inc.*, 197 NLRB 1222 (1972); *Great Coastal Express*, 196 NLRB 871 (1972).

<sup>3</sup> The American Postal Workers Union, AFL-CIO (the National) has filed a motion to intervene and for a remand. The Respondent filed a response to the National's motion and the National filed a reply to the Respondent's response to the National's motion. The motion contains a statement of the National's position on the suitability of this case for deferral. Upon consideration of the National's motion and its views on the issue of deferral contained therein, and having resolved for reasons stated above that no further proceedings before the Board are warranted, we deny the National's motion at this time. This ruling does not preclude the National from reasserting intervenor status by reapplication in the event that a motion for further consideration is granted under the terms stated in this Order.

On the basis of the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE RESPONDENT

United States Postal Service provides postal service for the United States of America and operates various facilities throughout the United States, including its facility in Youngstown, Ohio, in the performance of that function. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reorganization Act, as amended.

#### II. THE LABOR ORGANIZATION INVOLVED

Youngstown Postal Workers Union Local 443, affiliated with the American Postal Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

### CONCLUSIONS OF LAW

The unfair labor practice violations in the complaint should be deferred to the grievance-arbitration procedure established by the parties' collective-bargaining agreement.

### ORDER

The Motion for Summary Judgment is granted, and the complaint is dismissed, provided that:

Jurisdiction of this proceeding is retained for the limited purpose of entertaining an appropriate and timely motion for further consideration upon a proper showing that either (a) the dispute has not, with reasonable promptness after the issuance of this Decision and Order, been either resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or (b) the grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

MEMBER ZIMMERMAN, dissenting.

Unlike my colleagues, I would deny the Respondent's Motion for Summary Judgment and remand this proceeding for a hearing. As with *United Technologies Corp.*, 268 NLRB 557 (1984), this case involves conduct allegedly impinging upon the integrity of the grievance process itself.<sup>1</sup>

<sup>1</sup> See my dissenting opinion in *United Technologies Corp.*, supra.

As such, I would find the Board's decision in *Joseph T. Ryerson & Sons*, 199 NLRB 461 (1972), controlling, and would not defer to the parties' grievance-arbitration procedure. As stated by the majority in *Ryerson*, supra at 462:

If we are to foster the national policy favoring collective bargaining and arbitration as a primary arena for the resolution of industrial disputes, as we sought to do in *Collyer*, by declining to intervene in disputes best settled elsewhere, we must assure ourselves that those alternative procedures are not only "fair and regular" but that they are or were open, in fact, for use by the disputants. These considerations caution against our abstention on a claim that a respondent has sought, by prohibited means, to inhibit or preclude access to the grievance procedure. (Footnote and citation omitted.)

Here, the complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by altering the locations, size, and physical arrangement of the stewards' work area; refusing to permit union stewards access to typing facilities; denying stewards forms necessary to leave their workplace to perform union duties; and instituting a rule that only one steward would be permitted in the stewards' work area at any one time, all without affording the Union an opportunity to negotiate and bargain with respect to this conduct. The complaint further alleges that the present location of the stewards' work area and the manner in which stewards have been required to prepare grievances creates the impression that the Respondent is engaging in surveillance and effectively limits employees' free and uninhibited access to that area, thereby inhibiting the grievance process itself in violation of Section 8(a)(1) of the Act. I would find these allegations to fall squarely within the holding of *Ryerson*, under which the Board has consistently declined to defer to the grievance-arbitration procedure. I would likewise refuse to defer,<sup>2</sup> and therefore dissent.

<sup>2</sup> In light of my position that the proceeding should be remanded for a hearing, I find it unnecessary to rule on the motion of the American Postal Workers Union, AFL-CIO (the National) to intervene and for a remand. The National could appropriately reassert its motion for intervenor status before the judge.